

AUGUST 20, 2001

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Damage to Underground
Facilities for the Year 2000

ORDER ON DEFAULT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We find that, on December 5, 2000 Jim Cummings Excavation (Respondent) violated the following provisions of our Underground Facilities Damage Prevention Rule, Chapter 895:

<u>Section</u>	<u>Violation</u>
4(D)(2)	Excavator failed to submit an incident report

We order that no penalty or remedial action be assessed.

II. BACKGROUND

On February 12, 2001, our Damage Prevention Investigator issued to Jim Cummings Excavation, by certified mail, a Notice of Probable Violation (NOPV) for an incident that occurred on December 5, 2000. We received the certified mail return receipt on February 20, 2001.

The NOPV listed the alleged violations and the Investigator's recommended penalty or remedial action, along with a draft consent agreement, for resolution of the matter by agreement. The NOPV also explained how Respondent could contest the allegations and indicated that failure to reply within 30 days would constitute a default, which the Commission could treat as a finding of violation for purposes of future applications of Chapter 895.

Respondent did reply but not within the time allowed. However, his response was accepted. The Respondent claimed the damage resulted from an "accident." The Damage Prevention Investigator reviewed all information presented and issued a Recommended Decision on March 30, 2001. This decision confirmed that the violation of Chapter 895, Section 4(D)(2) did occur. It also recommended that the second probable offense, Section 4(B)(1)(a), be dismissed. The Recommended decision also explained how it could be contested within 30 days. The Respondent did not reply and is subject to a finding of default, pursuant to Chapter 895, Section 7(B)(1)(d).

III. LEGAL AUTHORITY

Under 23 M.R.S.A. §3360-A (commonly known as the Dig Safe Law) the Maine Public Utilities Commission is responsible for enforcing the provisions of the law, as revised effective on August 11, 2000. The statute also directs the Commission to adopt procedures to gather information to hear and resolve complaints of failure to comply with the law.

These procedures are contained in Chapter 895 of the Commission's Rules, entitled "Underground Facility Damage Prevention Requirements", which became effective November 12, 2000.

IV. DECISION

After reviewing the evidence on the record in this matter, we find that it supports a finding that the Respondent committed this violation and, further, is in default. We agree the second noticed offense be dismissed. Therefore, we find the Damage Prevention Investigator's proposed resolution of this matter reasonable and adopt it.

Accordingly, we

O R D E R

1. That this violation be added to the Respondent's underground damage prevention record for purposes of future applications of Chapter 895; and
2. That a copy of this Order be sent to: Mr. James E. Cummings
Jim Cummings Excavation
P O Box 957
Windham, ME 04062

Dated at Augusta, Maine, this 20th day of August 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.